

# FARMINGTON POLICE DEPARTMENT

## POLICY AND PROCEDURE



**Policy Number:**  
261-08

**Effective Date:**  
08/14/2018

**Subject:**  
Driving While Intoxicated Enforcement  
Procedures

**Approved by:**

A handwritten signature in black ink, appearing to read "S.D. Hebbe".

**Steven D. Hebbe, Chief of Police**



### PURPOSE:

To establish guidelines for the enforcement, arrest, deterrence, and processing of intoxicated operators of motor vehicles.

### POLICY:

It is the policy of the Farmington Police Department to aggressively enforce laws dealing with chemically impaired motorists through the use of directed enforcement patrols, sobriety checkpoints, community awareness education, and routine patrol efforts in order to reduce the number of drug and alcohol related offenses and accidents.

### PROCEDURE:

#### **Driving While Intoxicated (DWI) Countermeasures:**

The Department recognizes that drivers impaired by alcohol and other intoxicants represent a serious threat to the safety of others. Because of the seriousness of this problem the Department participates in the Multi Agency DWI Task Force which implements the Community DWI and Operation DWI programs which are funded by Traffic Safety Bureau Grants. Additional selective DWI enforcement is funded through the local budget. Included in these programs are provisions for public education and enforcement.

#### **Training:**

Due to the high frequency of accidents and offenses resulting from impaired drivers, patrol officers and all officers involved in DWI enforcement receive up-to-date formal training which includes:

1. Specialized training in the application of Standardized Field Sobriety Testing (SFST);
2. Identifying DWI motorists by characteristic driving behavior;
3. Identifying the behavioral signs of intoxication;

4. Completion of required DWI reports and citations;
5. Use of breath alcohol testing instruments; and
6. Applicable Laws, Ordinances, and Statutes.

### **Breath Alcohol Testing Instrument Operators, Key Operators, and Traffic Sergeant Responsibilities:**

Operators of breath alcohol testing instruments receive detailed instruction in the proper use of the Department's breath alcohol testing instruments. Officers shall receive and maintain up-to-date training and certification of correct operation procedures and proficiency on those instruments whose operation requires certification by the Scientific Laboratory Division of New Mexico. It is the responsibility of the Traffic Sergeant to ensure the in service Intoxilyzer 8000 is checked at least weekly for function and to ensure the calibration gas cylinder is still within the current date range by department Key Operators. The Traffic Sergeant shall also ensure there are available copies of the Intoxilyzer 8000 calibration certificate and calibration gas cylinder certificates at the location where the Intoxilyzer 8000 is stationed.

### **Selective Enforcement Efforts:**

Efforts in the area of selective enforcement pertaining to the DWI violation will include:

1. Selective assignment of personnel to times and locations where analysis indicates a significantly high frequency of accidents and alcohol related violations occur;
2. Selective surveillance of those roadways and locations where an unusually high number of incidents involving alcohol/drug impaired drivers occur;
3. Special emphasis of enforcement efforts during the hours of 7:00 p.m. to 5:00 a.m. due to the large portion of alcohol/drug related incidents which occur during these hours or as determined by the use of data supplied by the Crime Analyst;
4. A Supervisor designated by the Chief of Police shall be responsible for gathering specific data about DWI violations. Collected information is disseminated as needed.

### **Arrest and Processing of DWI Motorists:**

Effective enforcement of DWI violations includes the detection of those motorists under the influence of alcohol or other intoxicants. Officers engaged in DWI enforcement should be mindful of the legal requirements surrounding the apprehension of intoxicated subjects and the scope of authority as it relates to enforcement.

An officer's observations are crucial in establishing the Probable Cause necessary to arrest a motorist for a DWI violation. Officers must rely on their formal training and experience in this area, putting emphasis on those driving actions which give rise to the officer's belief that a motorist is driving while impaired. Officers should bear in mind that their observations of the suspected DWI driver throughout their contact with the suspect are crucial elements of the DWI investigation. Observations before the stop, observations while the driver is still within the car, observations while the driver exits the car, observations while the driver is outside of the car, observation of the driver's performance of field sobriety tests, and observations during the arrest, transport and booking of the driver, all provide opportunity to effectively apprehend and prosecute the DWI driver. Officers

should treat every investigation as if the driver plans to refuse all field sobriety testing and chemical testing, carefully noting all indications that would lead a reasonable person to believe that the driver is impaired.

Recent case law rulings by the Supreme Court of the State of New Mexico have further clarified an officer's role in the detection, apprehension, and prosecution of DWI offenders, especially in cases where the officer does not observe an act of driving (vehicle in motion).

The Court's ruling in *State v. Martinez* effectively exempted DWI from the provisions of the Misdemeanor Arrest Rule, citing the public's intense interest in preventing tragedies associated with accidents resulting from DWI driving.

In cases where the officer has not seen the act of driving (vehicle in motion), the Court's ruling in *State v. Sims* provides the requirement that an officer must show that the suspected intoxicated driver of a vehicle "was actually, not just potentially, exercising control over the vehicle with the general intent to drive so as to pose a real danger to himself, herself, or the public". In describing their opinion in *Sims*, the Court also described circumstances wherein it was lawful for a driver to exercise control over the vehicle, but not demonstrate the general intent to drive. Using a vehicle for shelter, even with the engine running, can be construed as lawful, if the officer cannot show a general intent to drive.

Encountering drivers under such circumstances requires effective and intelligent investigations in order to determine whether or not the driver should be subjected to arrest and prosecution for DWI, or, in the alternative, provided assistance as well as reasonable steps taken to prevent potential liability should the driver later decide to drive while still impaired. To that end, officers should attempt to determine the driver's general intent. Statements by the driver, or other credible witnesses, regarding how they arrived at that location, what their intended destination is, what their purpose in being currently parked is, may all assist the officer in determining the driver's general intent to drive.

Observations of the driver's actions when contacted by police or when awakened (such as a driver immediately attempting to start a vehicle or engaging the vehicle's transmission while as yet not cognizant of the officer's presence and attempts to contact the driver) may also be considered by the officer toward an adequate showing of the driver's general intent to drive, versus the driver's intent to "sleep it off" or obtain shelter from the elements.

Additionally, when the officer is unable to show a general intent to drive, officers should take reasonable steps to provide assistance to the driver, such as arranging for safe transportation for the driver or otherwise assisting the driver in separating themselves from the potential opportunity for later, unanticipated driving. In all circumstances where it is not possible to reach viable alternatives, the officer shall warn the driver not to drive and shall issue a close patrol for the vehicle. The close patrol should include vehicle make, model, color, and license information as well as the driver's information. Upon any determination that the vehicle has moved from its known location, an Attempt to Locate shall be broadcast at the soonest reasonable opportunity, county-wide, in an effort to apprehend the suspected impaired driver.

After a decision has been made to stop a motorist suspected of driving while intoxicated, an officer should:

1. Approach the vehicle with caution;
2. Request the motorist's driver's license or other acceptable identification;

3. Interview the motorist, noting any observations that add to your suspicion of impairment;
4. If impairment is suspected, request that the motorist safely exit the vehicle and then proceed to administer Standardized Field Sobriety Testing (SFST) at a safe location. The use of an authorized portable breath testing device is an appropriate tool to assist the officer in the efficient determination of a driver's level of impairment. If the presence of a portable breath testing device is readily available, an officer can choose to utilize the device provided the motorist is advised in advance of the voluntary nature of the test along with the difference between the portable test and the test required per the Implied Consent Law;
5. Effect an arrest once the elements and evidence of the DWI violation have been observed, informing the driver of the charge for which they are being arrested. According to recent New Mexico Case Law, the officer is no longer required to verify that the DWI offender's mouth is free from food and foreign objects at the commencement of the requisite Deprivation Period. However, in order to facilitate the efficient prosecution of the case, it is recommended that the officer, as a matter of routine, continue to visually inspect the driver's mouth in order to verify the absence of food and foreign contaminants at the commencement of the Deprivation Period;
6. Secure a proper disposition for the suspect's vehicle. In accordance with Department Policy, vehicles are to be towed as a matter of routine upon the arrest of the driver. Vehicles should only be released at the scene into the care of a sober, licensed, registered owner;
7. Transport the subject to the San Juan County Detention Center for processing unless the situation dictates alternative destinations, such as San Juan Regional Medical Center or to the Farmington Police Department for the purpose of Implied Consent Breath Testing;
8. Administer to the driver, by a certified operator, a Breath Alcohol Test with an appropriate breath alcohol instrument. Prior to the administration of any chemical testing, the officer shall (in all cases where the driver is not incapable of receiving Implied Consent notification), while following the Advisory's instructions, read to the driver the Implied Consent Advisory directly from an advisory promulgated by the Scientific Laboratory Division. Under extreme circumstances where no Advisory is available from which to read the Implied Consent Advisory, officers shall, at a minimum, deliver the proper legal advisements to the driver, including their right to obtain independent testing at the expense of the department, their right to refuse testing, and the repercussions of refusal to submit to chemical testing (when appropriate), in accordance with requirements of the Scientific Laboratory Division of New Mexico;
9. As needed, transport the driver to the San Juan Regional Hospital for additional chemical testing of samples of the driver's blood. Additional testing shall be sought as a matter of routine when the driver is incapable of submitting a sufficient breath sample, when the driver's valid breath sample reveals an amount of alcohol inconsistent with the driver's performance on the field sobriety tests, and when the presence of contaminants or dangerous substances are indicated by the testing instrument;
10. In all cases involving Death, Great Bodily Harm or Injury, or other serious events involving a presumed or potentially impaired driver, the on-call Drug Recognition Expert (DRE) shall be notified of the investigation. Additionally, during investigations where the driver's valid breath sample results are inconsistent with the driver's performance on field sobriety tests and/or driving performance, and the driver is cooperative, the officer shall contact the on-call DRE for assistance in the investigation. (A successful DRE examination requires a reasonably compliant suspect as the DRE will be working in close proximity to the suspect in environments less secure than under normal circumstances.)

## **Juvenile Arrests for DWI:**

Juvenile drivers suspected of DWI can be subjected to the same Standard Field Sobriety Tests and investigative methods as adult drivers, with the exception of Miranda Warnings, which must be given to a juvenile, in accordance with Case Law, as soon as the juvenile is suspected of DWI or other applicable crimes. However, once the investigation has been completed and the decision to arrest the juvenile for DWI has been made, disposition of the juvenile is handled differently than for an adult. Immediate placement of the detained juvenile could be one of three avenues:

1. The juvenile can be released to a parent or custodian if they are readily available. This is according to officer discretion and time management. "On Demand" should be written in the Court Appearance section of any citations;
2. The juvenile should be transported to the Juvenile Detention Center if a parent or custodian is not readily available. The booking officer will conduct a short evaluation to determine if the juvenile will be placed in secure or non-secure detention. If the evaluation determines non-secure detention the transporting police officer will fill out the appropriate forms and the Teen Crisis Shelter will take custody of the juvenile. The Teen Crisis Shelter will release the juvenile to a parent or custodian at the time of their availability. "On Demand" should appear in the Court Appearance section of any citations;
3. A Juvenile Probation Officer will place a "Hold" on the juvenile if the evaluation determines his or her placement in secure detention. A Juvenile Statement of Probable Cause (Children's Court) would be filled out by the transporting police officer including the name of the JPO who authorized the "Hold." The Statement of Probable Cause will accompany a booking sheet and a Juvenile Authorization form also to be filled out by the transporting police officer. "Booked" would be written in the Court Appearance section of any citations and the juvenile would be left in the custody of the Juvenile Detention Center.

## **Criminal Charging:**

The DWI charge will be filed under the New Mexico State Statutes or the City of Farmington Ordinance. The appropriate charge will be based on the current requirements of the State and City governments.

## **Reporting Responsibilities:**

The arresting officer will be responsible to ensure that the following is completed:

1. Sobriety examination report (optional form). If completed, the form shall be scanned into the Mobile report under the "Attach Docs" tab;
2. DWI citation;
3. Notice of Revocation and Law Enforcement Officer's Statement;
4. Any other relevant traffic citation(s);
5. Appropriate and complete entry into the Breath Testing Instrument log book, if applicable;

6. Sign the Intoxilyzer 8000 breath sample printouts if breath samples are obtained;
7. Criminal complaint and probable cause statement;
8. District Attorney's case referral form as applicable;
9. Completion of any blood or breath documentation;
10. Any forms that may be required during the booking process.
11. All required forms in TraCS unless the officer does not have TraCS equipment, the TraCS system is not functioning, or the officer has not received training in the TraCS program.
12. If an Intoxilyzer 8000 is used to collect breath samples, the officer shall either scan in the Intoxilyzer 8000 calibration certificate and the Intoxilyzer 8000 calibration gas cylinder certificate (if used) into the Mobile report under the "Attach Docs" tab or place them in the DWI packet to be turned in to the records division.
13. A case and an arrest report shall be completed in the Mobile system.

#### **Blood Specimen Kit Storage:**

Blood Specimen Kits are stored in a locked drawer keyed to a Farmington Police Department issued "BB" key in the emergency room of San Juan Regional Medical Center. It is the responsibility of the Traffic Sergeant to ensure the drawer is checked at least weekly and resupplied as needed. This does not relieve any officers from resupplying the drawer with Blood Specimen Kits as needed.

#### **Blood Test:**

In the event that a blood test is required of the driver by the arresting officer, the test will be obtained according to the guidelines of the Motor Vehicle Code. The following criteria are required:

1. Two blood samples shall be collected by a physician licensed to practice medicine, a registered nurse or other qualified person to draw blood within the state of New Mexico. The drawing of blood must be observed by an officer of the Department. San Juan Regional Medical Center Emergency Room will be the location to have blood drawn. Only items contained in the Blood Specimen Kit will be used to obtain the blood samples.
2. The arresting officer must have the person drawing the blood complete any portions of the required documents included in the blood kit and accompanying forms. The officer witnessing the blood draw shall document the time of blood drawn in their report. The officer shall document the expiration date of the Blood Specimen Kit in their report. The person whose blood sample is being collected shall be given the opportunity to sign the required voluntary submission form contained in the Blood Specimen Kit. In the event that the person is incapable of signing the voluntary submission form, the reason and condition of the driver's incapacity shall be documented on the voluntary submission form and witnessed by the blood drawer.

3. Under circumstances that the blood samples are to be obtained pursuant to the service of a valid Search Warrant, that information shall be so documented on the voluntary submission form and other applicable accompanying documents;
4. The officer must ensure that the labels are appropriately affixed immediately after the samples are drawn;
5. The arresting officer will complete the Report of Analysis Breath and Blood Alcohol form to be enclosed with the Blood Specimen Kit and that appropriate integrity seals are placed on the kit and its contents;
6. Collected blood samples will be sent to the Scientific Laboratory Division in Albuquerque, New Mexico for analysis.

## **Blood Test Requirements**

### **66-8-111. Refusal to submit to chemical tests**

If a person under arrest for violation of an offense enumerated in the Motor Vehicle Code [66-1-1 NMSA 1978] refuses upon request of a law enforcement officer to submit to chemical tests designated by the law enforcement agency as provided in Section 66-8-107 NMSA 1978, none shall be administered except when a municipal judge, magistrate or district judge issues a search warrant authorizing chemical tests as provided in Section 66-8-107 NMSA 1978 upon finding in a law enforcement officer's written affidavit that there is probable cause to believe that the person has driven a motor vehicle while under the influence of alcohol or a controlled substance, thereby causing the death or great bodily injury of another person, or there is probable cause to believe that the person has committed a felony while under the influence of alcohol or a controlled substance and that chemical tests as provided in Section 66-8-107 NMSA 1978 will produce material evidence in a felony prosecution.

### **66-8-108. Consent of person incapable of refusal not withdrawn.**

Any person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by Section 66-8-107 NMSA 1978, and the test or tests designated by the law enforcement officer may be administered.

***Subjects arrested for DWI related offenses shall always be given a breath test utilizing an Intoxilyzer 8000 unless:***

1. They are physically unable to do to a medical condition or incapacitation;
2. They refuse to submit to a sample;
3. It is suspected the subject is under the influence of a substance other than alcohol (ETOH).
4. The officer is not certified to operate an Intoxilyzer 8000;
5. There is no functioning Intoxilyzer 8000 instruments available.

### **Blood Warrants**

***Blood warrant shall be obtained for subjects under the following conditions:***

1. The suspect is arrest for a 4<sup>th</sup> or subsequent DWI offense and refuses to submit to a breath test;
2. The suspect was the driver of a vehicle involved in a crash where death or great bodily was inflicted upon any occupant of any vehicle and the driver is suspected to be under the influence of alcohol or a controlled substance and refuses a breath or blood test;
3. The suspect is arrested for a DWI offense where charges of child abuse are hinged on the DWI charge.
4. The suspect has committed a felony while under the influence of alcohol or a controlled substance and that chemical tests as provided in Section 66-8-107 NMSA 1978 will produce material evidence in a felony prosecution and refuses to submit to a breath test for alcohol or a blood test if substances other than alcohol are suspected.

### **Independent Secondary Blood Tests:**

In the event that the driver exercises his right to obtain an independent second test of his blood alcohol content, the following guidelines will be met:

1. The driver will be allowed a reasonable opportunity to arrange for the physician, licensed nurse, technician, or other person qualified by the State of New Mexico to draw blood, of his choice, to be done at either the Holding Facility or San Juan Regional Hospital, at the expense of the Department;
2. The sample drawing will be witnessed by the officer in accordance to the established guidelines of similar tests done on behalf of the officer's request as heretofore listed;
3. The officer will retain the second sample into evidence and deliver an appropriately filled out Second Sample Receipt to the driver. The sample will be sealed correctly and stored in evidence as safe keeping for the driver for 90 days, during which time; the driver can contact the Records Division and request the delivery of the sample to an appropriate testing facility of their choice.

### **Sobriety Check Points:**



## **Site Selection and Safety Considerations:**

Site selection will be based upon selective enforcement criteria which includes information regarding the time of day, day of week, location, the number and frequency of alcohol related accidents and Driving While Intoxicated arrests. The data to help determine site selection is obtained from the Records Division and the Department of Public Safety Traffic Safety Bureau based on traffic data.

Sobriety checkpoint site selection will take into consideration the safety of the public and all police personnel involved with the operation. Locations selected will have maximum visibility to traffic with adequate safety lighting. Sufficient adjoining space must be available to remove the suspect's vehicle from the roadway for further inquiry if reasonable suspicion of DWI is developed. A sufficient number of warning signs, portable lights, cones, and police cars with emergency lights flashing should be utilized as needed.

The checkpoint supervisor will determine which warning devices should be utilized based on location and time of day. In all cases, there must be sufficient warning to the motorists approaching the location to alert them of the upcoming checkpoint.

## **Notice to the Public and the Media:**

Notice of the checkpoints will be given to the public via the media to inform the public of the purpose of checkpoints and to reduce the elements of surprise. Materials may be distributed to motorists at the checkpoint to further educate the public regarding the seriousness of the DWI problems in the area. The media will be informed of the results upon the completion of the checkpoint.

## **Personnel and Equipment:**

An appropriate number of personnel must be assigned to the checkpoint location. Consideration must be given to the volume of traffic at the proposed checkpoint location. Enough officers should be present to maintain the checkpoint, direct traffic and provide transportation of prisoners. It is the responsibility of the checkpoint supervisor to ensure there is no unreasonable delay in the flow of traffic. If the traffic begins backing up too far, the traffic should be waved through the checkpoint until it can be reasonably managed.

The checkpoint supervisor must also monitor the status of those arrested at the check point and make every effort to have the prisoners transported as soon as possible.

All officers assigned to the sobriety checkpoint must be in uniform wearing the reflective vests required by Department policy. The checkpoint supervisor is responsible for assuring that all support equipment needed to establish the checkpoint is transported to the checkpoint.

## **Operational Procedures:**

1. Prior approval must be obtained from the Chief of Police or designee before a sobriety checkpoint can be initiated;

2. All officers and volunteers participating in the Sobriety Checkpoint shall attend a briefing prior to deployment of the Sobriety Checkpoint. In the event that a participant cannot attend the scheduled briefing, it the responsibility of the Checkpoint Supervisor to ensure that the participant is made aware of the Checkpoint Tactical Plan;
3. The Checkpoint Supervisor, when feasible, should attempt to preserve a record, by audio/video recording, of the Checkpoint Briefing dialog and the physical set-up of the Sobriety Checkpoint, including signage approaching the Sobriety Checkpoint. The audio/video record should be made available to Prosecuting Attorneys responsible for any criminal cases arising from the Sobriety Checkpoint Operations;
4. The selection of vehicles to be stopped must not be arbitrary. It is recommended that every vehicle is stopped;
5. The occupants of the vehicle are to be informed of the purpose of the stop;
6. The vehicle is to be detained for not longer than a reasonable period of time. If it is believed that the occupants of the vehicle have committed another crime, the vehicle may also be reasonably detained;
7. If suspicion of an offense is developed, the vehicle should be removed to a pre-designated staging area where further investigation and testing can be conducted;
8. If traffic begins to back up, creating traffic congestion, or, if vehicles waiting contact by checkpoint personnel have not received contact within four (4) minutes, the Checkpoint Supervisor shall temporarily terminate the Checkpoint Operations, allowing all the stopped vehicles are to be waved through, unless it is evident that a vehicle being waved through is in flagrant violation of the law and failure to act could endanger the public. Only the Checkpoint Supervisor may designate when the checkpoint operations re-commence (and which vehicle shall be the first to be contacted) after traffic congestion has cleared;
9. In order to protect surrounding business and residential areas, in addition to existing roadway traffic and pedestrians, from an increased risk of damage and personal injury from DWI accidents, vehicles ignoring Checkpoint signs restricting U-turns, left turns, lane closures, and all other governing traffic laws, shall be stopped and the driver cited for an applicable violation(s).
10. Recent Case Law; State of New Mexico v. Anaya, has determined that, based upon specific articulable facts individual to each circumstance, an officer may contact the driver of a vehicle that has made overt or other articulable efforts to avoid the checkpoint area;
11. The duration of a typical checkpoint will be determined by the Chief of Police, or the Checkpoint Supervisor;
12. After the completion of the checkpoint, the results of the checkpoint activity must be documented by the participating officers and given to the Checkpoint Supervisor who will forward the information to the Supervisor designated by the Chief of Police to coordinate such activities;
13. A copy of the Sobriety Checkpoint Approval, the Sobriety Checkpoint Tactical Plan and the Sobriety Checkpoint Diagram shall be kept on file by a Supervisor designated by the Chief of Police for the purpose of court testimony and hearings.

